

For purposes of the Illinois Retailers' Occupation Tax Act, food is "any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including food such as condiments, spices, seasonings, vitamins, bottled water and ice." See 86 Ill. Adm. Code 130.310(b)(1). (This is a GIL).

October 31, 2002

Dear Xxxxx:

This letter is in response to your letter dated July 29, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are writing to request a determination on the applicability of the sales/use tax of your state to products sold by our company. AAA is a network marketing company which sells nutritional, personal care and other consumer products. The products are distributed through independent contractors (Team Members) who recruit other Team Members into their downline. AAA collects and remits sale/use tax on behalf of it's Team Members pursuant to an agreement with your state.

We request a ruling on the sales tax treatment of the following products.

PRODUCT

The labels for these products are attached for your reference.

We would greatly appreciate it if you would identify the basis in statute, regulation or ruling for your determination. Please send your response to the following address:

.....

Thank you for your prompt consideration of this matter. If you have any questions please do not hesitate to contact the undersigned.

Please refer to 86 Ill. Adm. Code 130.310, "Food, Drugs, Medicines and Medical Appliances." This regulation describes how sales of food can be subject to either low (1%) or high (6.25%) rates

under the Retailers' Occupation Tax Act. Local sales taxes may also apply, depending upon where retail sales are made.

All sales by retail establishments that provide facilities for on-premises consumption of food are subject to the high rate of tax unless the establishments utilize separate means of collection and physically partition the areas in which food not for immediate consumption is sold, 86 Ill. Adm. Code 130.310(b)(2)(A).

If businesses do not provide facilities for on-site consumption, they must charge the high rate on all food sales if a majority (over 50%) of their gross receipts from food sales is for items sold in a state of preparation for immediate consumption (prepared by the retailer so as to be eaten without substantial delay after the final act of preparation). If a majority of their gross receipts from food sales is for items sold in bulk, they would charge the low rate on all food sales (except for hot foods, foods prepared by the retailer for immediate consumption, soft drinks and alcoholic beverages).

The Department regulation states that food is "any solid, liquid, powder or item intended by the seller primarily for human internal consumption, whether simple, compound or mixed, including food such as condiments, spices, seasonings, vitamins, bottled water and ice." See 86 Ill. Adm. Code 130.310(b)(1).

Distributors who sell food items without premises for consumption will incur liability at the State tax rate of 1%, so long as the majority of food sales made by those distributors are not food items sold in a state of preparation for immediate consumption. When products of manufacturers or wholesalers are sold at retail in Illinois by numerous distributors or team members, the manufacturers or wholesalers can assume the responsibility for paying the taxes to the Department on behalf of all sales made by distributors pursuant to 86 Ill. Adm. Code 130.550.

As explained in the regulation, sales of medicines or drugs can also be subject to a low 1% rate, plus applicable local taxes. A medicine or drug is defined at Section 130.310(c)(1) as "any pill, powder, potion, salves, or other preparation intended by the manufacturer for human use and which purports on the label to have medicinal qualities."

We have examined the product label you submitted with your letter. We note this item is a dietary supplement. As a general proposition, such products qualify for the low rate as a food item, so long as all the qualifiers listed above are met.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk